
IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Civil Nos. 2:07 CV830 DB
Petitioner,	:	REPORT & RECOMMENDATION
vs.	:	Honorable Dee Benson
JERRY JOHNSON, President of JJ DESIGN, INC.,	:	Magistrate Judge Brooke Wells
Respondent.	:	

The United States of America filed a petition to enforce its March 23, 2007 IRS Summons (“the Summons”) pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Benson issued an Order to Show Cause (“OTSC”) on November 20, 2007, which referred this matter to the undersigned under 28 U.S.C. § 636(b)(3).

The OTSC directed Respondent to file a written response supported by sworn affidavits to the United States’ Petition to Enforce the Summons (“the Petition”) within ten days of the OTSC being served upon him. The OTSC also directed the undersigned to convene a hearing on December 11, 2007 at 9:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause.

On December 11, 2007, this Court convened a hearing at which Respondent was present appearing pro se, and Petitioner was present appearing through Assistant United States Attorney Jared C. Bennett. Based on the arguments and representations presented in the Petition and at the December 11, 2007 hearing, the undersigned reports the following:

1. The United States has carried its burden of proof to enforce the Summons. Through the Summons and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States has established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summons. Respondent's legal counsel, who was not present at the hearing, previously agreed with the United States by a letter dated December 6, 2007, that Mr. Johnson would have all records required by the Summons at legal counsel's office by December 17, 2007. The United States requested that this Court recommend that those records be turned over to the IRS by no later than December 20, 2007.

Consequently, the undersigned recommends that:

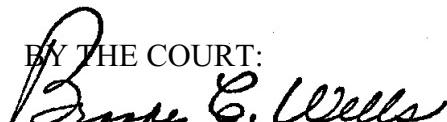
1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and
2. The District Court order Respondent to provide the the information required by the Summons to his legal counsel's office by no later than December 17, 2007, and that those materials be provided to the IRS by no later than December 20, 2007. The IRS offices are located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the

District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

28th

DATED this ~~11th~~ day of December 2007.

BY THE COURT:


BROOKE WELLS, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing **REPORT & RECOMMENDATION** was mailed, postage prepaid, this 11th day of December 2007 to the following:

Kirk W. Bennett, Esq.
P.O. Box 416
West Jordan, UT 84084

/s/ Jared C. Bennett